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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1906.

THE STATE OF MISSOURI, *Complainant,* *vs.* THE STATE OF ILLINOIS and THE SANITARY DISTRICT OF CHICAGO, *Defendants.*	No. 4 ORIGINAL

MOTION FOR ALLOWANCE AND TAXATION OF COSTS. AFFIDAVIT AND SUGGESTIONS IN SUPPORT THEREOF.

ERASMUS C. LINDLEY,
Attorney for Sanitary District of Chicago.

THE GUNTHORP-WARREN PRINTING CO., 116 RANDOLPH STREET, CHICAGO

Supreme Court of the United States.

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Now comes the Sanitary District of Chicago, defendant, and moves the court for the entry of an order allowing to this defendant the following costs, and taxing the same or directing the clerk so to do, and that this defendant may have decree therefor:

$ 5,650.00, paid Frank S. Bright, special commissioner herein, in accordance with the order of court and the rules of this court.

$ 3,776.37, for the taking down in shorthand and transcribing the testimony of defendant's witnesses, and supplying the same

to said commissioner, being at the rate of thirty-seven and one-half (37½c) cents per page for said testimony, and ten ($10.00) dollars for each day's attendance before said commissioner by the shorthand reporters at points other than the City of Chicago, and five ($5.00) dollars for each day's attendance in the City of Chicago.

$ 720.00, solicitors' fees, being the amount provided for by statute, to-wit, twenty ($20.00) dollars for attendance at final hearing and two and fifty one-hundredths ($2.50) dollars for each deposition taken, per Sec. 84, U. S. Revised Statutes.

$10,146.37, Total.

And in support of said motion, this defendant files herewith the affidavit of Erasmus C. Lindley.

SANITARY DISTRICT OF CHICAGO,

By Erasmus C Lindley
Attorney.

IN THE

SUPREME COURT OF THE UNITED STATES.

October Term, 1906.

State of Missouri,
Complainant,
vs.
State of Illinois, and Sanitary District of Chicago,
Defendants.
} No. 4 Original.

AFFIDAVIT OF ERASMUS C. LINDLEY IN SUPPORT OF MOTION FOR COSTS.

STATE OF ILLINOIS,
COUNTY OF COOK. } ss.

Erasmus C. Lindley, being first duly sworn, deposes and says, that he is a resident and citizen of the City of Chicago, County of Cook and State of Illinois; that he is the Attorney for the Sanitary District of Chicago, a municipal corporation organized and existing under and by virtue of the laws of the State of Illinois, and one of the defendants in the above entitled suit; that said Sanitary District of Chicago in the prosecution of its defense herein has become indebted to May E. Weasmer and Fred. A. Burton, or one of them, shorthand reporters and stenographers, in the sum of Three Thousand Seven Hundred Seventy-six and 37/100 ($3,776.37) Dollars for taking down in shorthand and transcribing the testimony of the witnesses called on behalf of the defendants herein before the special commissioner, Frank S. Bright, appointed to take the testimony herein; that said indebtedness so incurred, was

incurred for the purpose of furnishing said commissioner with a typewritten copy of said testimony to be used and to constitute his report thereon to this Court; that said testimony so taken down and transcribed was used by said commissioner in the preparation of his report, and is on file in the office of the Clerk of this Court as a part of said commissioner's report of the testimony taken in said case.

This affiant further says that said Sanitary District has become liable to pay to said Weasmer & Burton, or one of them, or their assignee, said sum of money, as aforesaid, whenever the courts of Cook County shall have determined which of said parties is entitled thereto; that there is a controversy as to whether said May E. Weasmer, being the Weasmer of said Weasmer & Burton, or Fred. A. Burton, being the Burton of said Weasmer & Burton, or one Frank Housman, alleged to be the assignee of said Burton, is entitled thereto; and that there is pending and undisposed of in the Circuit Court of Cook County, State of Illinois, a bill in chancery wherein the said Weasmer seeks to enjoin the payment of said sum, or any part thereof, to either Burton or Housman, and further seeks to enjoin a suit brought in the name of Weasmer & Burton, for the use of Housman, against the said Sanitary District of Chicago to enforce the payment thereof; that there is pending in the Superior Court of Cook County, an action in assumpsit brought in the name of Weasmer & Burton, for the use of Frank Housman, against the Sanitary District of Chicago, to recover the said sum of money, above mentioned, alleged to be due from said Sanitary District for the work as aforesaid; that

said Weasmer & Burton claim a sum considerably in excess of the amount above named for the doing of said work; that the said Sanitary District of Chicago contends that the amount above mentioned should be the amount paid for the doing of said work; that the above named amount is a sum equal to thirty-seven and one-half (37½c) cents for each page of the said testimony so taken in shorthand and transcribed, plus Ten ($10.00) Dollars per day for fifty-one day's time consumed in attendance at the hearing before said commissioner, outside of the City of Chicago, for the purpose of taking down in shorthand said testimony; and $5.00 (five dollars) per day for seventy-five (75) days' attendance before said commissioner in the City of Chicago; that said rates per day and per page are the rates ordinarily and customarily paid by the said Sanitary District of Chicago for such work when taken in the City of Chicago, and are less, if anything, than the ordinary and customary charges for such work in said city.

And this deponent further says, that the Sanitary District of Chicago has paid to Frank S. Bright, the special commissioner appointed by the Supreme Court of the United States in the above entitled case to take the testimony therein, the sum of Fifty-six Hundred and Fifty ($5650.00) Dollars, being one-half of the compensation and expenses of said commissioner, said payment being evidenced by the statement of said Bright to that effect filed in this case with the clerk of the court, that the payment of said sum to said Bright by said Sanitary District was in accordance with the order of said court entered in the above entitled cause

at the October term thereof, 1902; that said Sanitary District of Chicago has not been reimbursed for the expenditure, or any portion thereof, so made to said Bright.

And further deponent sayeth not.

Erasmus C. Bradley

Subscribed and sworn to before me .....

..... this 16th day of May A. D. 1906.

William H. Beebe

Notary Public.

IN THE

SUPREME COURT OF THE UNITED STATES.

October Term, 1906.

State of Missouri,
Complainant,
vs.
State of Illinois, and Sanitary District of Chicago,
Defendants.
} No. 4 Original.

SUGGESTIONS IN SUPPORT OF MOTION FOR ALLOWANCE OF COSTS.

The order of this court entered February 19, 1906, dismissing the bill of complaint, reads as follows:

"This cause came on to be heard on the pleadings and proofs, and was argued by counsel. In consideration whereof, it is now here ordered, adjudged and decreed by this court that the bill of complaint herein be and the same is hereby dismissed *with costs,* without prejudice."

On November 10, 1902, all parties herein moved to have Frank S. Bright appointed special commissioner, and filed a stipulation in respect thereto, which provided, among other things, as follows:

"One-half of the compensation and expenses of the commissioner shall be advanced by the plaintiff, and one-half by the defendant, the Sanitary District of Chicago, and each side shall pay such fees to its witnesses as may be necessary to secure their attendance, but not exceeding the fees allowed by law in such cases, the costs of the case to be taxed by the court on the final disposal of the case, to be paid in such manner as the court may at that time determine. The commissioner shall be allowed $20 per day for his compensation and

his actual traveling and hotel expenses, an itemized statement of which shall be submitted to the court in his final report. He shall report to the court a stenographic copy of the testimony taken by him, to be furnished to him by the parties to the suit, but he shall not report any findings of facts or his conclusions of the law. The said commissioner shall have the powers and perform the duties of a master in chancery as provided in the rules of this court, and said rules shall apply in all respects to the proceedings to be taken under this order."

On the 17th day of November, 1902, the court entered an order upon said stipulation appointing said Bright special commissioner, which said order provided, among other things, as follows:

"It is ordered that Frank S. Bright, a member of this bar and a resident of the District of Columbia, be and is hereby appointed a commissioner to take and return the testimony in this cause, with the powers of a master in chancery, as provided in the rules of this court; but said commissioner shall not make any findings of fact or state any conclusions of law. * * * * * * Said commissioner shall report to the court the testimony taken by him, without findings of fact or conclusions of law, with all convenient speed, and shall receive, as agreed by the parties, twenty dollars per day for his compensation, and his actual expenses, an itemized statement of which shall accompany his report."

Equity Rule 67 provides, among other things, as follows:

"The expense of the taking down of depositions by a stenographer and of putting them into typewriting or other writing, shall be paid in the first instance by the party calling the witnesses, and shall be imposed by the court, as part of the costs, upon such party as the court shall adjudge should ultimately bear them."

Section 824 of the Revised Statutes provides as follows:

"On a trial before a jury in civil or criminal causes, or before referees, or on a final hearing in equity or admiralty, a docket fee of twenty dollars. * * * For each deposition taken and admitted in evidence in a cause, two dollars and fifty cents. * * *"

On May 8, 1906, we filed a motion with the clerk of the court asking to have taxed as costs the items which we now seek to have allowed, and accompanied said motion with an affidavit substantially as the one supporting the present motion. We duly notified counsel for complainant of such action, and that we would ask the clerk to pass upon the same on the 14th day of May, 1906.

Counsel for complainant appeared before the clerk at that time, and objected to the taxation of said items. The clerk thereupon referred us to the court, whereupon we made our motion to the court, on that day, taking leave to print as we now do.

It will be seen from the above that the expenditures for which we seek to be reimbursed by having the same taxed as costs, are taxable not only by the ordinary rules for the taxation of costs in chancery cases, but they are expenditures which were incurred by the Sanitary District of Chicago in order to comply with the stipulation for the appointment of the commissioner and the order of the court thereon. It was thus provided that one-half of the expenses and compensation of the commissioner should be paid in the first instance by the Sanitary District of Chicago; that the parties should furnish to the commissioner a transcript of the

testimony for his report; the costs finally to abide the determination of the court on final hearing.

Complying with the order of court, the Sanitary District of Chicago paid the special commissioner the amount of $5,650, evidenced by the affidavit herein and the commissioner's statement on file with the clerk, for which expenditure it now seeks to be reimbursed.

It has also incurred liability to pay the shorthand reporters the sum of $3,776.37, the actual payment of which has not been made because of legal proceedings pending to determine to which of three parties it is payable. The other item, solicitors' fees, sought to be taxed is covered by Section 824 of the Revised Statutes, above set forth.

The final order of the court dismissed the bill with costs, which we take it was a determination that the Sanitary District of Chicago was entitled to a decree against the complainant, the State of Missouri, for all ordinary taxable costs. This would likewise include witness fees, for which we make no claim and for which a large sum was expended, but because of the condition of the records, a proper showing of payment cannot be made.

Our right to have the items allowed as costs seems so clear under the statute, the equity rules, the order appointing the commissioner, and the final decree of this court, that we refrain from any discussion of the general principles of law relative to the right to costs, and leave the matter by merely suggesting two or three such general propositions and authorities in support thereof, without quoting therefrom.

(1) The general rule in equity is that when final and sole decree on the merits are for one party, full costs should usually follow for that party.

Hunter v. *Town of Marlboro,* 2 Wood B. & M., 168.
Federal cases, No. 6908.
Dubois v. *Kirk,* 158 U. S., 58.
Rule 24 Supreme Court.
2 Daniel's Ch. Pr., side page 1381.
Adams' Equity, side pages 391-392.
U. S. v. *Southern Pacific Ry. Co.,* 56 Fed., 865.
Coburn v. *Schroeder,* 8 Fed., 521.

(2) The motion for the taxation of costs is properly made any time after the final decree and before the expiration of the term at which the decree or judgment was rendered.

Sizer v. *Many,* 16 How., 98.
Coburn v. *Schroeder,* 8 Fed. Rep., 521.

(3) A solicitor's fee and a fee of $2.50 for taking each deposition are allowable under the statute.

Revised Statutes, Section 824.
Troy Iron & Nail Factory v. *Corning,* 3 Blatchford, p. 456.
Jerman v. *Stewart,* 12 Fed. Rep., 271.
Green v. *French,* 5 N. J. Law—J. 228 (cited by Judge Blatchford in 23 Fed., 58).
Sallie P. Linderman, The ....., 22 Fed., 557.

The number of witnesses examined on the part of the defendant as appears from the commissioner's report exceeds the number for which we seek to have the fee charged.

We submit we are entitled to the entry of an order allowing to the Sanitary District of Chicago costs in the sum of ten thousand one hundred and forty-six 37/100 dollars ($10,146.37) and against the complainant the State of Missouri, and taxing the same or directing the clerk to do so.

Respectfully submitted,

SANITARY DISTRICT OF CHICAGO,

By Erasmus C. Knoller
Attorney.